

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2020

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.NO.1498 OF 2015

Karuppayee

...Appellant

Vs

Metropolitan Transport Corporation Limited,
Rep. by its Managing Director,
Anna Salai, Chennai.

...Respondent

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.11.2014 made in M.C.O.P.No.3510 of 2013 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr.S.Udhayakumar

For Respondents : Mr.K.S.Suresh

J U D G M E N T

(The case has been heard through Video Conferencing)

Heard the learned counsel for the appellant.

2. It is the case filed by the injured claimant seeking enhancement of compensation being not satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

3. On 03.03.2013, at about 02.15p.m., the claimant travelled in the public transport bus of the respondent herein. At Thiruvannamiyur bus stop, when she was about to alight the bus as the last passenger, the driver of the bus not noticing her had moved the bus without ensuring her getting down from the bus. As a result, the petitioner sustained grievous injuries and admitted in the hospital for fracture of intra trochanteric at right femur. Hence, the claim petition under Section 163A was filed seeking compensation of Rs.1,00,000/-.

4. The Transport Corporation filed counter stating that the claimant tried to get down from the moving bus near Jayanthi Theatre signal inspite of crew advised her not to get down from the moving bus. The claimant against the advice jumped from the bus. Therefore, she is not entitled for any compensation.

5. The Tribunal, after considering the evidence and the opinion given by the Doctor regarding the disability has awarded a sum of Rs.81,950/- as compensation.

6. Learned counsel for the appellant, in this appeal for enhancement would submit that the claimant was 55 years old at the time of accident and she earning her livelihood as a coolie Due to the fracture in the right hip, she is not able to walk or climb step and do her routine job. When the doctor has assessed 40% functional disability, the Tribunal has taken it as a part of the body disability and converted it into the whole body disability to fix the disability at 15%, which is very low and not in consonance with the principle laid down by the Hon'ble Supreme Court in Rajkumar vs Ajay Kumar case. Further, the learned counsel would also contend that that only Rs.10,000/- was awarded under the head of loss of income and the same has to be enhanced.

7. This Court, after giving anxious consideration to the submission made by the learned counsel for the appellant and on scrutinizing the records, finds from the Discharge Summary Ex.P2 that the claimant has sustained fracture of intra trochnteric at right femur and taken treatment at hospital from 03.03.2013 to 19.03.2013, 4 holed short barreled DHS plating was fixed at the fracture site. Though the doctor has assessed 40% disability, the Tribunal has fixed it as 15% functional disability.

8. Taking into consideration of the age of the victim and the site of fracture, this Court fix the percentage of functional disability at 20% and accordingly, the award is modified as below:

Compensation under Various Heads	Award passed by this Court
Pecuniary Loss 40,000X11X20%	Rs. 88,000/-
Loss of income	Rs. 10,000/-
Pain and Suffering	Rs. 10,000/-
Medical Expenses	Rs. 2,000/-
Total	Rs.1,10,000/-

Thus, the respondent Transport Corporation is directed to pay compensation of Rs.1,10,000/- with 7.5% p.a. from the date of numbering the petition (03.07.2013) till the date of deposit. The respondent is directed to deposit the amount within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is entitled to withdraw the same on petition.

9. Accordingly, the Civil Miscellaneous Appeal is partly allowed. No order as to costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal
and III Court of Small Causes,
Chennai.
2. The Section Officer,
VR Section, High Court,
Madras-104.

CMA.NO.1498 of 2015

SAI (CO)
CS/17/06/2021

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